INTERLUDE

CONFRONTING DEEP STRICTURES: ROBINSON, RICKEY, AND RACISM

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FOREWORD

A strange and wonderful major league event in 1947 altered baseball and, perhaps, the consciousness of America. Viewed from a Critical Legal Studies perspective, however, that event—the integration of the National League by Jackie Robinson—is both more and less significant than it might otherwise seem. In this essay, Professor Soifer explains why.

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It's trashing time again.[1] Could there be a better subject/object than that moment which surely ranks as the most important in our national game: the spring day a generation ago when Jackie Robinson strolled onto Ebbets Field as a member of the Brooklyn Dodgers? As Robinson stepped purposefully across the line in 1947, he assaulted racism not only in baseball but throughout American society. But Jackie Robinson has long since gone to his reward; Ebbets Field is a housing development; and the Dodgers deserted to dig profits out of Chavez Ravine. None of them hits us where we live today. Therefore, why should we even consider the men and boys of dusty summers long ago when all the answers seemed black and white, we knew how to score and who the home team was, and we could hardly wait till next year?

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This essay surfaced briefly during the Legal History Workshop at the University of Wisconsin in the summer of 1982. While not quite an underground classic, the piece has circulated *sub rosa* since then. The Cardozo Law Review got wind of it somehow and had the temerity to ask if they might see it. I would like to thank those students for their chutzpah and my friends within and without Critical Legal Studies for reading it. I also would like to berate them, however, for not saving me from myself. Unlike the usual caveats, I wish to make clear both that I have friends and that they bear a large measure of responsibility for errors and assists, inclusions, and omissions.

This essay was inspired by the memory, and I hope the spirit of Arthur Leff. He attended Critical Legal Studies meetings to bear witness and to bring his coruscating critical wit to bear.

[1] At this point, it is *de rigeur* to list much of the work of one's friends, all of one's own past work, most of what one has recently read, virtually everything one should have read, or all of the above. I won't.

Many of us dreamed of the big leagues, but we couldn't hit the curve. Still more remain obsessed with arcane records; but now we concentrate on our own standings and follow the laws' averages. A comparison of law professing and baseball fanning might be fruitfully demystifying, but that is not now our core concern. Rather, we must confront Branch Rickey, the great grey eminence who was president and general manager of the Brooklyn Dodgers.[2] Rickey's fame is immanent because of his role in pulling strings to integrate baseball. On closer analysis, however, Rickey's legendary status is premised on a basic internal contradiction.

In fact, Branch Rickey may be considered the worst racist. It is time to challenge the racial-enlightenment hypothesis directly. Structural continuity, not recursive reconstruction, should be our focus.

By moving to integrate the big leagues, Branch Rickey presumed his own individualistic relative autonomy. He ignored the organicism inherent even in his own name—Branch Rickey—and instead exploited his atomistic position near the apex of the baseball hierarchy. In the process, Branch Rickey tried to dismantle the Yankees, yet it was the Negro leagues which suffered more and more directly through his actions. With their passing went a strong sense of community, shared struggle, and a degree of dignity of, by, and for black Americans.

By personally selecting one individual—Jackie Robinson, valued for his particularistic and strongly subjectivist traits—Rickey echoed and enhanced the dominant culture. Rickey actually was creature and creator of liberal apologetics; he undermined the cooperationist, preliberal and postliberal impulse of the black baseball bailiwick. Thereby, Rickey fundamentally altered the early late stage of liberal capitalism.

To pierce to the roots of Branch Rickey's brilliant ploy, a counterfactual thought experiment provides a useful illustration: An all-black team might have provided true integration. A real World Series could have been played out in the belly of the beast of competitive capitalism. Negro leagues might have been complemented by teams from Latin America, Cuba, and the rest of the Third World. Signifi-

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[2] I wrote the bulk of this essay before learning that Branch Rickey was a graduate of the University of Michigan Law School, class of 1911. Rickey enrolled in law school as a rest cure to restore his health after contracting tuberculosis; he finished the requisite three years in two; and he served on the law review, while coaching Michigan's varsity baseball team. Branch Rickey: A Law School all-star, 27 U. Mich. L. Quadrangle Notes 37 (Fall 1982). Not unsurprisingly (as a lawyer might say), this added thick description tends to confirm the crucial distinction I draw in this essay between what is fair, what is foul, and what is for the birds in law-jobbing today.

cantly, there was no experimentation with such counterhegemonic enclaves; they apparently were too threatening to the existing structure.

Whether intended or not, the message conveyed to thousands of blacks was that only those imbued with the dominant competitive tendencies of the surrounding white world might dream of succeeding. Those inclined to value teamwork and community were out of luck. The liberal ideology of mid-century America crystallized around the integrated individual. In fact, Branch Rickey's integrationist moment in 1947 represents both the highwater mark and the beginning of the end.

It may be useful to view Robinson's addition to the Dodger starting lineup dialectically: By crossing a significant boundary, Robinson also closed the frontier. Jackie Robinson stands triumphant. Yet his social, economic, and political significance manifests an essentially incompatible elaboration of individualistic striving and the protocorporationist ethos of big time, big buck sports. His moment could not last; some who were not even Giants of the age kept the Dodgers from finishing first.

Upon closer scrutiny, a deconstructionist reading would readily note the humorous imagery associated with the outlandish and out-landish concept of "Brooklyn" in juxtaposition with the revealing scrape and shuffle of the "Dodgers," commonly and condescendingly known as "Da Bums." Moreover, the stabilizing, safety-valve aspect of Jackie Robinson's individual bravery is underscored when one considers a primary basis of his success: his remarkable capacity for *stealing* bases. Thus, the integration of baseball by an unusually proficient *base stealer* is celebrated for advancing the American myth of an equal start in the race of life. Success may be yours—if you are a credit to your race—but only if you steal by the rules.

Even this complementarity contains its own destructive contradiction. Baseball's integration cost many black baseball players their jobs. The desegregation of the public schools suggested by *Brown v. Board of Education*—with its parallel stigmatizing potential and its premise of an integrationist duality—produced similar unemployment among black teachers and similar uncertainty, as well as false consciousness, among many who should have been the naturals and/or the allies. Surely Jackie Robinson helped lead the United States Supreme Court to *Brown,* but neither Robinson nor the dawning recognition that where there was a Will there might be a Mays could make the Justices think or swim. Most Americans in the 1950's, of course, would neither fish nor cut bait. The deliberateness of the na-

tion's speed contrasted powerfully with Robinson's fleetness on the basepaths.

Yet it is important to remember that the record-bound moguls and Dixie Walkers of baseball were forced to accept an exceptionally talented individual black man. In retrospect, this acceptance appeared to actualize the basic American faith in happy endings, if only after extra innings. But Branch Rickey's apparent ("a parent") *deus ex machina* intervention must also be perceived as an apologetic for a baser instinct within a system which overtly relies upon a "scorekeeper"—a system which displays no reticence about its dependence on a hierarchical pyramid rising from a base in young fans through old fans to corporate boxes, and then up from mere "players" to "managers," "general managers," and finally, and without shame, to "owners."

In fact, the owner to this day controls everything except, perhaps, the shadowy, somewhat ominous Men-in-Blue dubbed the Umpires. It is widely assumed, though hardly demonstrated, that Umpires will strike back even if fear won't strike out. In any event, the Umpires' decisions, being final, are presumptively infallible.

Still, at the level of politics, the example of Branch Rickey and Jackie Robinson suggests that less may be more, most of the time, more or less. As an integral part of our gross national project, the resonance of the parable of their lives implies that life in the projects may be tough or that toughs may have to project to get to first base. To resolve such a false conundrum, however, we must first confront an issue of fundamental constitutive importance: Who's on first?

Branch Rickey's role as boss still defines and delights; yet Rickey's role also illuminates as it eliminates our previous understanding of the past. Only by raising the contradictions—black/white, ball/strike, fair/foul, safe/out—can we hope to transcend the artificial binary choices in times past of our national pastime.

This essay attempts both a first step and a paradigmatic leap, a yank and a dodge. In it, I refuse to give lip service to the belief that nice guys finish last, but I also challenge the assumption that last guys finish nice.[3] We cannot escape our own empowerment; we must decide for ourselves if we should share glory and at what price. Can we halve our cake and eat it too? After all, even strikes are matters of intersubjective perception. To choose whether to swing and what to take may be the only way to reach the big time.

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[3] I owe this thought to my friend and fellow traveler, Hugh MacGill, who got it from Marion J. Levy, Jr., who attributes it to Marion Stanley Kelley, Jr. See "Law 3" in M. Levy, Levy's Six Laws of the Disillusionment of the True Liberal (1966).

Still, one thing is clear: If we are not part of dissolution, we're part of the problem. That said, little more can be done with our gloves off. We must trot back to our original positions, confident that we are at the cutting edge on a glistening diamond, capable of brilliant moves on sunny afternoons.